IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.2609 OF 2006

M/s. Sai Enterprises ...Petitioner.

Versus

M/s. Kamakshi Pressing
and 2 Ors. ...Respondents.

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Mr.Mahesh Subramanian, Advocate for the Petitioner.
Mr.S.R.Margolkar, Adv. for Respondent Nos.1 & 2.
Smr.V.R.Bhosale, APP, for State.

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CORAM : SMT.V.K.TAHILRAMANI,J.

DATED : 26th February, 2007.

P.C.:

1. Heard the learned Advocate for the petitioner-orig.complainant, the learned Advocate for respondent Nos.1 & 2-orig.accused and the learned APP for the State.

2. The respondent-accused was convicted in a case under Section 138 of N.I.Act. The trial Court convicted the accused under Section 138 of N.I.Act and directed that he should pay compensation to the complainant of Rs.3,95,000/- under Section 357 (3) of Cr.P.C., in default to suffer S.I. for one month. The accused preferred an Appeal No.22 of 2006 against the said judgment. At the time of admission of the Appeal, the accused was asked to deposit 25% of the

compensation amount.

3. Pursuant to the directions of the Sessions Court the accused had deposited 25% of the amount of compensation i.e. Rs.98,750/- in the trial Court.

4. The said Appeal against conviction came to be partly allowed. The conviction was confirmed, however substantive sentence of imprisonment of one year was reduced to three months.

5. After disposal of the appeal, respondent-accused has undergone the sentence of imprisonment awarded for commission of offence under Section 138 of N.I.Act and he has also undergone the imprisonment in default of payment of compensation.

6. It is the case of the accused that though he was not in a position to deposit the amount of Rs.98,750/-, he has deposited the said amount by taking loan. After the disposal of the Appeal, the respondent-accused preferred an application No.173 of 2006 stating therein that as he has undergone the imprisonment in default of payment of compensation, he is entitled to withdraw the amount of Rs.98,750/-. The

petitioner-orig.complainant had also filed Misc.Application No.174/2006 with a prayer that he be allowed to withdraw the amount of Rs.98,750/- which was deposited by the accused. The application preferred by the complainant came to be rejected and the application preferred by the accused came to be allowed. Being aggrieved by the order allowing the application of the accused to withdraw Rs.98,750/-, this Writ Petition has been preferred.

7. It is the case of the petitioner that just because the accused had undergone punishment in default of payment of compensation that itself would not absolve him of the liability to pay the compensation. It is his case that though compensation was awarded, as per Section 431 of Cr.P.C. any money payable by virtue of any order made under Cr.P.C. and the method of recovery which is not otherwise expressly provided for, shall be recovered as if it was fine and action for recovery of fine is provided under Section 421 of Cr.P.C.

. The relevant part of Sections 421 and 423 reads as follows :-

> **421. Warrant for levy of fine** - (i) When an offender has been sentenced to pay a fine, the Court passing the sentence may

take action for the recovery of the fine in either or both of the following ways that is to say it may-

(a) Issue a warrant for the levy of the amount by attachment and sale of any movable property belonging to the offender.

(b) Issue a warrant to the Collector of the district, authorizing him to realise the amount as arrears of land revenue from the movable or immovable property, or both, of the defaulter.

Provided that if the sentence directs that in default of payment of the fine, the offender shall be imprisoned, and if such offender has undergone the whole of such imprisonment in default, no Court shall issue such warrant unless, for special reasons to be recorded in writing, it considers it necessary so to do, or unless it has made an order for the payment of expenses or compensation out of the fine under section 357.

431 Money ordered to be paid recoverable as a fine -

Any money (other than a fine) payable by virtue of any order made under this Code, and the method of recovery of which is not otherwise expressly provided for, shall be recoverable as if it were a fine.

Provided that section 421 shall, in its application to an order under section 359, by virtue of this section, be construed as if in the proviso to sub-section (1) of section 421, after the words and figures "under section 357" the words and figures "or an order for payment of costs under section 359" had been inserted.

8. It is the contention of the respondent-accused that he was directed to pay compensation and not fine and when the accused had undergone the imprisonment awarded in default of payment of compensation, he is entitled to

withdraw the amount deposited by him.

9. In view of provisions under section 421, it is clear that as per proviso if the sentence directs that in default of payment of fine the offender shall be imprisoned and such offender has undergone the whole of such imprisonment in default, no Court shall issue warrant for levy of fine amount unless for special reasons to be recorded in writing, it considers it necessary so to do, or unless it has made an order for the payment of expenses or compensation out of the fine under section 357.

10. In this case, payment of compensation is not out of fine as provided under section 357(1) Cr.P.C. and the order of payment of compensation is passed under section 357(3). Admittedly, the accused has already undergone imprisonment in default of payment of compensation. Under Section 421 Cr.P.C., there is specific provision that when offender has undergone whole of the imprisonment in default, no Court shall issue such warrant unless for special reason to be recorded in writing, if considers it necessary so to do. The object of criminal justice is to punish a guilty person and not recovery of amount which is

jurisdiction of Civil Court. The policy is that in general, the offender ought not to be required both to pay fine and serve sentence in default. In the present case for recovery of amount of cheque, civil suit can be filed.

11. Looking to the fact that civil suit can be filed for the said amount, the learned Sessions Judge did not find any special reason to recover the amount of compensation as fine after the respondent-accused had undergone imprisonment in default. The learned Sessions Judge rightly allowed the accused to withdraw the amount looking to the provisions of Section 421 of Cr.P.C.. The view taken by the learned Sessions Judge calls for no interference. Hence, Writ Petition is rejected. Ad-interim stay granted by this Court is vacated.

(SMT.V.K.TAHILRAMANI,J.)